



April 1, 2009

ENGROSSED SENATE BILL No. 418

DIGEST OF SB 418 (Updated March 25, 2009 6:31 pm - DI 75)

Citations Affected: IC 3-9.

Synopsis: Civil penalties for certain disclaimers. Establishes a civil penalty of not more than \$1,000 per communication for a person who makes a communication that contains a disclaimer that is difficult to read or whose placement is easily overlooked. Provides that a person whose sole act is, in the normal course of business, participating in the preparation, printing, distribution, or broadcast of the communication containing the disclaimer does not have liability for a disclaimer that violates the statute.

Effective: July 1, 2009.

Leising, Landske

(HOUSE SPONSORS — BATTLES, RICHARDSON, BURTON)

January 12, 2009, read first time and referred to Committee on Elections.
January 27, 2009, reported favorably — Do Pass.
January 29, 2009, read second time, ordered engrossed. Engrossed.
February 3, 2009, read third time, passed. Yeas 35, nays 14.

HOUSE ACTION

February 25, 2009, read first time and referred to Committee on Elections and Apportionment.

March 31, 2009, amended, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.

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ES 418—LS 7140/DI 102+



April 1, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 418

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 3-9-4-16, AS AMENDED BY P.L.221-2005,
2 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 16. (a) In addition to any other penalty imposed,
4 a person who does any of the following is subject to a civil penalty
5 under this section:

6 (1) Fails to file with the election division a report in the manner
7 required under IC 3-9-5.

8 (2) Fails to file a statement of organization required under
9 IC 3-9-1.

10 (3) Is a committee or a member of a committee who disburses or
11 expends money or other property for any political purpose before
12 the money or other property has passed through the hands of the
13 treasurer of the committee.

14 (4) Makes a contribution other than to a committee subject to this
15 article or to a person authorized by law or a committee to receive
16 contributions on the committee's behalf.

17 (5) Is a corporation or labor organization that exceeds any of the

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limitations on contributions prescribed by IC 3-9-2-4.

(6) Makes a contribution in the name of another person.

(7) Accepts a contribution made by one (1) person in the name of another person.

(8) Is not the treasurer of a committee subject to this article, and pays any expenses of an election or a caucus except as authorized by this article.

(9) Commingles the funds of a committee with the personal funds of an officer, a member, or an associate of the committee.

(10) Wrongfully uses campaign contributions in violation of IC 3-9-3-4.

(11) Violates IC 3-9-2-12.

(12) Fails to designate a contribution as required by IC 3-9-2-5(c).

(13) Violates IC 3-9-3-5.

(14) Serves as a treasurer of a committee in violation of any of the following:

(A) IC 3-9-1-13(1).

(B) IC 3-9-1-13(2).

(C) IC 3-9-1-18.

(15) Fails to comply with section 4(d) of this chapter.

(16) Violates IC 3-9-3-2.5 by making a communication that contains a disclaimer:

(A) that is difficult to read; or

(B) whose placement is easily overlooked.

This subdivision does not apply to a person whose sole act is, in the normal course of business, participating in the preparation, printing, distribution, or broadcast of the communication containing the disclaimer.

(b) This subsection applies to a person who is subject to a civil penalty under subsection (a)(1) or (a)(2) for filing a defective report or statement. If the commission determines that a person failed to file the amended report or statement of organization not later than noon five (5) days after being given notice under section 14 of this chapter, the commission may assess a civil penalty. The penalty is ten dollars (\$10) for each day the report is late after the expiration of the five (5) day period, not to exceed one hundred dollars (\$100) plus any investigative costs incurred and documented by the election division. The civil penalty limit under this subsection applies to each report separately.

(c) This subsection applies to a person who is subject to a civil penalty under subsection (a)(1) or (a)(2) for a delinquent report or statement. If the commission determines that a person failed to file the report or statement of organization by the deadline prescribed under

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1 this article, the commission shall assess a civil penalty. The penalty is
 2 fifty dollars (\$50) for each day the report or statement is late, with the
 3 afternoon of the final date for filing the report or statement being
 4 calculated as the first day. The civil penalty under this subsection may
 5 not exceed one thousand dollars (\$1,000) plus any investigative costs
 6 incurred and documented by the election division. The civil penalty
 7 limit under this subsection applies to each report separately.

8 (d) This subsection applies to a person who is subject to a civil
 9 penalty under subsection (a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9), or
 10 (a)(10). If the commission determines that a person is subject to a civil
 11 penalty under subsection (a), the commission may assess a civil penalty
 12 of not more than one thousand dollars (\$1,000), plus any investigative
 13 costs incurred and documented by the election division.

14 (e) This subsection applies to a person who is subject to a civil
 15 penalty under subsection (a)(5). If the commission determines that a
 16 person is subject to a civil penalty under subsection (a)(5), the
 17 commission may assess a civil penalty of not more than three (3) times
 18 the amount of the contribution in excess of the limit prescribed by
 19 IC 3-9-2-4, plus any investigative costs incurred and documented by
 20 the election division.

21 (f) This subsection applies to a person who is subject to a civil
 22 penalty under subsection (a)(11). If the commission determines that a
 23 candidate or the candidate's committee has violated IC 3-9-2-12, the
 24 commission shall assess a civil penalty equal to the greater of the
 25 following, plus any investigative costs incurred and documented by the
 26 election division:

- 27 (1) Two (2) times the amount of any contributions received.
- 28 (2) One thousand dollars (\$1,000).

29 (g) This subsection applies to a person who is subject to a civil
 30 penalty under subsection (a)(12). If the commission determines that a
 31 corporation or a labor organization has failed to designate a
 32 contribution in violation of IC 3-9-2-5(c), the commission shall assess
 33 a civil penalty equal to the greater of the following, plus any
 34 investigative costs incurred and documented by the election division:

- 35 (1) Two (2) times the amount of the contributions undesignated.
- 36 (2) One thousand dollars (\$1,000).

37 (h) This subsection applies to a person who is subject to a civil
 38 penalty under subsection (a)(13). If the commission determines, by
 39 unanimous vote of the entire membership of the commission, that a
 40 person has violated IC 3-9-3-5, the commission may assess a civil
 41 penalty of not more than five hundred dollars (\$500), plus any
 42 investigative costs incurred and documented by the election division.

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(i) This subsection applies to a person who is subject to a civil penalty under subsection (a)(14). If the commission determines, by unanimous vote of the entire membership of the commission, that a person has served as the treasurer of a committee in violation of any of the statutes listed in subsection (a)(14), the commission may assess a civil penalty of not more than five hundred dollars (\$500), plus any investigative costs incurred and documented by the election division.

(j) This subsection applies to a person who is subject to a civil penalty under subsection (a)(15). The commission may assess a civil penalty equal to the costs incurred by the election division for the manual entry of the data contained in the report or statement, plus any investigative costs incurred and documented by the election division.

(k) This subsection applies to a person who is subject to a civil penalty under subsection (a)(16). If the commission determines that a person is subject to a civil penalty under subsection (a)(16), the commission may assess a civil penalty of not more than one thousand dollars (\$1,000) per communication, plus any investigative costs incurred and documented by the election division.

~~(k)~~ (l) All civil penalties collected under this section shall be deposited with the treasurer of state in the campaign finance enforcement account.

~~(l)~~ (m) Proceedings of the commission under this section are subject to IC 4-21.5.

SECTION 2. IC 3-9-4-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. (a) In addition to any other penalty imposed, a person who does any of the following is subject to a civil penalty under this section:

- (1) Fails to file with a county election board a report in the manner required under IC 3-9-5.
- (2) Fails to file a statement of organization required under IC 3-9-1.
- (3) Is a committee or a member of a committee who disburses or expends money or other property for any political purpose before the money or other property has passed through the hands of the treasurer of the committee.
- (4) Makes a contribution other than to a committee subject to this article or to a person authorized by law or a committee to receive contributions in the committee's behalf.
- (5) Is a corporation or labor organization that exceeds any of the limitations on contributions prescribed by IC 3-9-2-4.
- (6) Makes a contribution in the name of another person.



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(7) Accepts a contribution made by one (1) person in the name of another person.

(8) Is not the treasurer of a committee subject to this article, and pays any expenses of an election or a caucus except as authorized by this article.

(9) Commingles the funds of a committee with the personal funds of an officer, a member, or an associate of the committee.

(10) Wrongfully uses campaign contributions in violation of IC 3-9-3-4.

(11) Fails to designate a contribution as required by IC 3-9-2-5(c).

(12) Violates IC 3-9-3-5.

(13) Serves as a treasurer of a committee in violation of any of the following:

(A) IC 3-9-1-13(1).

(B) IC 3-9-1-13(2).

(C) IC 3-9-1-18.

(14) Violates IC 3-9-3-2.5 by making a communication that contains a disclaimer:

(A) that is difficult to read; or

(B) whose placement is easily overlooked.

This subdivision does not apply to a person whose sole act is, in the normal course of business, participating in the preparation, printing, distribution, or broadcast of the communication containing the disclaimer.

(b) This subsection applies to a person who is subject to a civil penalty under subsection (a)(1) or (a)(2) for filing a defective report or statement. If the county election board determines that a person failed to file the report or a statement of organization not later than noon five (5) days after being given notice under section 14 of this chapter, the county election board may assess a civil penalty. The penalty is ten dollars (\$10) for each day the report is late after the expiration of the five (5) day period, not to exceed one hundred dollars (\$100) plus any investigative costs incurred and documented by the board. The civil penalty limit under this subsection applies to each report separately.

(c) This subsection applies to a person who is subject to a civil penalty under subsection (a)(1) or (a)(2) for a delinquent report or statement. If the county election board determines that a person failed to file the report or statement of organization by the deadline prescribed under this article, the board shall assess a civil penalty. The penalty is fifty dollars (\$50) for each day the report is late, with the afternoon of the final date for filing the report or statement being calculated as the first day. The civil penalty under this subsection may not exceed one

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thousand dollars (\$1,000) plus any investigative costs incurred and documented by the board. The civil penalty limit under this subsection applies to each report separately.

(d) This subsection applies to a person who is subject to a civil penalty under subsection (a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9), or (a)(10). If the county election board determines that a person is subject to a civil penalty under subsection (a), the board may assess a civil penalty of not more than one thousand dollars (\$1,000), plus any investigative costs incurred and documented by the board.

(e) This subsection applies to a person who is subject to a civil penalty under subsection (a)(5). If the county election board determines that a person is subject to a civil penalty under subsection (a)(5), the board may assess a civil penalty of not more than three (3) times the amount of the contribution in excess of the limit prescribed by IC 3-9-2-4, plus any investigative costs incurred and documented by the board.

(f) This subsection applies to a person who is subject to a civil penalty under subsection (a)(11). If the county election board determines that a corporation or a labor organization has failed to designate a contribution in violation of IC 3-9-2-5(c), the board shall assess a civil penalty equal to the greater of the following, plus any investigative costs incurred and documented by the board:

- (1) Two (2) times the amount of the contributions undesignated.
- (2) One thousand dollars (\$1,000).

(g) This subsection applies to a person who is subject to a civil penalty under subsection (a)(12). If the county election board determines, by unanimous vote of the entire membership of the board, that a person has violated IC 3-9-3-5, the board may assess a civil penalty of not more than five hundred dollars (\$500), plus any investigative costs incurred and documented by the board.

(h) This subsection applies to a person who is subject to a civil penalty under subsection (a)(13). If the county election board determines, by unanimous vote of the entire membership of the board, that a person has served as the treasurer of a committee in violation of any of the statutes listed in subsection (a)(13), the board may assess a civil penalty of not more than five hundred dollars (\$500), plus any investigative costs incurred and documented by the board.

(i) This subsection applies to a person who is subject to a civil penalty under subsection (a)(14). If the board determines that a person is subject to a civil penalty under subsection (a)(14), the board may assess a civil penalty of not more than one thousand dollars (\$1,000) per communication, plus any investigative costs

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- 1 **incurred and documented by the board.**
- 2 ~~(i)~~ **(j)** All civil penalties collected under this section shall be
- 3 deposited with the county treasurer to be deposited by the county
- 4 treasurer in a separate account to be known as the campaign finance
- 5 enforcement account. The funds in the account are available, with the
- 6 approval of the county fiscal body, to augment and supplement the
- 7 funds appropriated for the administration of this article.
- 8 ~~(j)~~ **(k)** Money in the campaign finance enforcement account does
- 9 not revert to the county general fund at the end of a county fiscal year.
- 10 ~~(k)~~ **(l)** Proceedings of the county election board under this section
- 11 are subject to IC 4-21.5.

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COMMITTEE REPORT

Madam President: The Senate Committee on Elections, to which was referred Senate Bill No. 418, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 418 as introduced.)

LANDSKE, Chairperson

Committee Vote: Yeas 10, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Elections and Apportionment, to which was referred Senate Bill 418, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, between lines 24 and 25, begin a new line block indented and insert:

"This subdivision does not apply to a person whose sole act is, in the normal course of business, participating in the preparation, printing, distribution, or broadcast of the communication containing the disclaimer."

Page 5, between lines 16 and 17, begin a new line block indented and insert:

"This subdivision does not apply to a person whose sole act is, in the normal course of business, participating in the preparation, printing, distribution, or broadcast of the communication containing the disclaimer."

and when so amended that said bill do pass.

(Reference is to SB 418 as printed January 28, 2009.)

BATTLES, Chair

Committee Vote: yeas 12, nays 0.

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